

## **EXPLANATORY STATEMENT**

### *Financial Services Compensation Scheme of Last Resort Levy Act 2023*

### *Financial Services Compensation Scheme of Last Resort Levy Regulations 2023*

Section 19 of the *Financial Services Compensation Scheme of Last Resort Levy Act 2023* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Specifically, the *Financial Services Compensation Scheme of Last Resort Levy Regulations 2023* (the Regulations) relies on the following regulation-making powers in the Act:

- subsection 8(1) of the Act, which provides for regulations to prescribe the kinds of sub-sectors that are required to pay the annual levy and the general conditions that are required to be met for the annual levy to be imposed on a person;
- section 9 of the Act, which provides for regulations to prescribe the general conditions for the imposition of a special levy; and
- subsections 12(1), 13(1), 14(1), 15(1) and 16(1) of the Act, which provide for regulations to prescribe the methods for working out the amount of the annual levy, further levy, special levy and one-off levy.

The purpose of the Regulations is to support the amendments made by the Act, which created the levy framework to fund the compensation scheme of last resort (CSLR).

The Act imposes levies on parts of the financial services industry to fund the CSLR. The CSLR levy framework comprises the following funding mechanisms:

- primary funding mechanism - an annual levy for a levy period and a sub-sector;
- secondary funding mechanisms:
  - where a revised claims, fees and costs estimate for a levy period and a sub-sector would not cause the sub-sector levy cap to be exceeded - one or more further levies;
  - where a revised claims, fees and costs estimate for a levy period and a sub-sector could cause the sub-sector levy cap to be exceeded - one or more special levies, as determined by the Minister; and
- a one-off levy payable in the first levy period only, which funds the backlog of accumulated unpaid complaints (and associated unpaid and accumulated unpaid Australian Financial Complaints Authority (AFCA) fees) for

complaints given to AFCA between 1 November 2018 and 7 September 2022 that fall within the scope of the CSLR.

The Regulations support the Act by prescribing:

- the sub-sectors that are required to pay the annual levy for the second levy period and each subsequent levy period;
- the general conditions for the imposition of the annual levy and the special levy; and
- the methods for working out the amount of the annual levy, further levy, special levy and one-off levy.

Public consultation on the draft regulations took place between 8 September and 7 October 2022. Stakeholder submissions did not raise any concerns regarding the intended operation of the draft regulations.

Details of the Regulations are set out in [Attachment A](#).

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commenced on the later of:

- the day after this instrument was registered on the Federal Register of Legislation; and
- the day the *Financial Services Compensation Scheme of Last Resort Levy Act 2023* commenced.

The Financial Services Royal Commission Final Report has been certified as being informed by a process and analysis equivalent to a Policy Impact Analysis for the purposes of the Government decision to implement this reform. The Financial Services Royal Commission Final Report can be accessed from the Australian Parliament House website.

A statement of Compatibility with Human Rights is at [Attachment B](#).

**Details of the *Financial Services Compensation Scheme of Last Resort Levy Regulations 2023***

**Section 1 – Name of the Regulations**

This section provides that the name of the Regulations is the *Financial Services Compensation Scheme of Last Resort Levy Regulations 2023* (the Regulations).

**Section 2 – Commencement**

This section provides that the Regulations commenced on the later of:

- the day after this instrument was registered on the Federal Register of Legislation; and
- the day the *Financial Services Compensation Scheme of Last Resort Levy Act 2023* commenced.

**Section 3 – Authority**

This section provides that the Regulations are made under the *Financial Services Compensation Scheme of Last Resort Levy Act 2023* (the Act).

**Section 4 – Definitions**

Section 4 of the Regulations defines the key words and terms used in the Regulations.

**Section 5 – Rules about amounts**

Section 5 of the Regulations provides for standard rounding rules, by providing that monetary amounts worked out under this instrument should be rounded to the nearest whole dollar, and for non-monetary amounts, rounded to the nearest whole number.

**Part 2 – Matters relating to imposition of levy**

**Section 6 – Sub-sectors subject to annual levy**

The CSLR levy framework relies on the annual levy as the primary funding mechanism to recover the claims, fees and costs that the CSLR operator estimates will be payable for the second levy period (and each subsequent levy period) and a sub-sector.

Subsection 8(1) of the Act provides that the annual levy is imposed on a person for the second levy period (and each subsequent levy period) if, at any time during the qualifying period for the levy period, the person:

- is a member of a sub-sector of a kind prescribed by the regulations; and
- meets the general conditions prescribed by the regulations.

Section 6 of the Regulations prescribes the four kinds of sub-sectors that are required to pay the annual levy for the purposes of paragraph 8(1)(a) of the Act. These sub-sectors are defined with reference to the ASIC Supervisory Cost Recovery Levy Regulations 2017 (ASIC Levy Regulations). The ASIC Levy Regulations group similar kinds of entities, which are regulated by the Australian Securities and Investments Commission (ASIC), into industry sub-sectors. The four sub-sectors that are required to pay the annual levy are the:

- credit intermediaries sub-sector (as described in subsection 25(1) of the ASIC Levy Regulations);
- credit providers sub-sector (as described in subsection 26(1) of the ASIC Levy Regulations);
- licensees that provide personal advice on relevant financial products to retail clients sub-sector (as described in subsection 43(1) of the ASIC Levy Regulations); and
- securities dealers sub-sector (as described in subsection 67(1) of the ASIC Levy Regulations).

This means that an entity that is a member of any of these sub-sectors during the qualifying period for a levy period that meets the general conditions for the annual levy is required to pay the annual levy for the levy period.

An entity may fall into multiple sub-sectors for a levy period depending on their business activities and licence authorisations. If this is the case, the entity is required to pay the annual levy for each sub-sector of which they are a member.

The qualifying period for a levy period is the 12-month period starting 24 months before the start of the levy period. For example, if the second levy period is from 1 July 2024 to 30 June 2025, the qualifying period for the second levy period will be from 1 July 2022 to 30 June 2023.

#### Sections 7 and 8 – General conditions for imposition of annual levy and special levy

Paragraphs 8(1)(b) and 9(d) of the Act provide that regulations may prescribe the general conditions for the imposition of the annual levy and a special levy (where the special levy is to be spread across several sub-sectors).

Section 7 of the Regulations prescribes the general conditions for the annual levy, which are that:

- the person is a leviable entity for the qualifying period for the levy period; and
- a law of the Commonwealth requires the person (either directly or indirectly) to be a member of the Australian Financial Complaints Authority (AFCA) scheme.

‘Leviable entity’ is defined in accordance with the *ASIC Supervisory Cost Recovery Levy Act 2017* (ASIC Levy Act), which provides that a ‘leviable entity’ for a

financial year is a person who is a regulated entity at any time in the financial year and is not an exempt entity for the financial year. This means that a person who is a member of one or more prescribed sub-sectors and who is required to pay a levy under the ASIC Levy Act is also required to pay the CSLR annual levy.

‘AFCA scheme’ is defined in accordance with the *Corporations Act 2001* (Corporations Act) as the external dispute resolution scheme which is administered by AFCA and for which an authorisation under Part 7.10A of the Corporations Act is in force. A person who holds an Australian financial services licence or an Australian credit licence is required to be a member of the AFCA scheme.

Section 8 of the Regulations prescribes the general conditions for the imposition of a special levy (where the special levy is imposed across several sub-sectors). The prescribed conditions are the same as those for the annual levy, except that:

- the requirement to be a leviable entity applies in relation to the levy period or the previous levy period; and
- the requirement to be a member of the AFCA scheme applies at any time during the levy period or the previous levy period.

### **Part 3 – Amount of levy payable**

#### Sections 9 and 11 – Amount of annual levy and graduated levy component

Subsection 12(1) of the Act provides for regulations to prescribe the method for working out the amount of annual levy imposed on a person for a levy period and a sub-sector.

Section 9 of the Regulations provides that the amount of annual levy payable by a person for a levy period and a sub-sector is the sum of:

- the minimum levy component for the sub-sector; and
- the graduated levy component for the person for the levy period and the sub-sector.

This method is consistent with the objectives for working out the amount of annual levy, specified in subsection 12(2) of the Act, by providing that the total amount of annual levy imposed on all members of a sub-sector for a levy period does not:

- exceed the amount determined in the CSLR operator’s initial claims, fees and costs estimate for the levy period and the sub-sector;
- cause the sub-sector levy cap for the levy period and the sub-sector to be exceeded (as specified in subsection 17(2) of the Act); and
- cause the scheme levy cap across all members across all sub-sectors for the levy period to be exceeded (as specified in subsection 17(1) of the Act).

### ***Minimum levy component***

Subsection 9(2) of the Regulations provides that the minimum levy component for each sub-sector is \$100. This means that leviable entities in each sub-sector will be subject to a flat minimum levy amount of \$100 and (if applicable) a variable graduated levy amount.

### ***Graduated levy component***

Section 11 of the Regulations prescribes the method for working out the graduated levy component of the annual levy.

The formula for working out the graduated levy component of the annual levy is as follows:

$$\left[ \text{Sub-sector costs} - \left( \frac{\text{Minimum levy component}}{\text{Sub-sector population}} \times \text{Sub-sector population} \right) \right] \times \frac{\text{Graduated entity metric}}{\text{Sub-sector metric}}$$

For the purposes of this formula:

- sub-sector costs – is the lesser of:
  - the amount specified in the CSLR operator’s initial claims, fees and costs estimate for the levy period and the sub-sector; and
  - the sub-sector levy cap for the levy period and the sub-sector, which is prescribed by subsection 17(2) of the Act.
- minimum levy component - is \$100;
- sub-sector population - is the number of members in the sub-sector for the qualifying period for the levy period who are also members of the AFCA scheme at any time during the qualifying period for the levy period;
- graduated entity metric – is the person’s entity metric for the levy period and the sub-sector. A person’s ‘entity metric’ is determined in accordance with section 12 of the Regulations; and
  - An exception to this rule applies in relation to credit providers – where the graduated entity metric is the difference between the person’s entity metric for the levy period and the sub-sector and \$100 million.
- sub-sector metric – is the sum of the amounts of graduated entity metric for the levy period and the sub-sector for all of the persons that form part of the sub-sector population. This is intended to apportion the levy payable in proportion to the leviable entity’s size.

If a component of the formula is nil or a negative amount, the amount of the graduated levy component is nil, and the levy amount payable by the entity for the levy period is equal to the minimum levy amount (\$100).

The formula for working out the annual levy is intended to be consistent with the method for working out the levy payable under section 10 of the ASIC Levy Regulations. The only difference is that, unlike the ASIC Levy Regulations, the sub-sector population for the CSLR annual levy only includes members of the AFCA scheme.

### Section 12 – Entity metric

Section 12 of the Regulations prescribes a person’s ‘entity metric’ for the purpose of working out the graduated levy component of the annual levy.

In each case, the entity metric for the CSLR annual levy is the same as the entity metric for these sub-sectors in the ASIC Levy Regulations.

#### ***Credit intermediaries sub-sector***

The entity metric for the credit intermediaries sub-sector is the number of credit representatives that the credit intermediary has at the end of the qualifying period for the levy period.

‘Credit representatives’ has the same meaning as in the *National Consumer Credit Protection Act 2009* (Credit Act).

In practice, this means that, in addition to the minimum levy component of \$100, each member of the credit intermediaries sub-sector is required to pay a variable levy amount based on the number of credit representatives it has as a proportion of the total number of credit representatives in the sub-sector.

If the entity does not hold an Australian credit licence on every day of the qualifying period for the levy period, the entity metric that applies to credit intermediaries is subject to a pro-rata adjustment. This adjusts the levy amount the credit intermediary is required to pay based on the proportion of days in the qualifying period on which the person held an Australian credit licence.

#### ***Credit providers sub-sector***

The entity metric for the credit providers sub-sector is the total amount (gross amount) of credit provided by the credit provider in the qualifying period for the levy period under credit contracts (not including small or medium amount credit contracts).

‘Small amount credit contract’ is defined in accordance with section 5 of the Credit Act as a non-ongoing credit contract provided by a provider that is not an authorised deposit-taking institution and where the value of the contract does not exceed \$2,000.

Similarly, ‘medium amount credit contract’ is defined in section 204 of the National Credit Code (in Schedule 1 to the Credit Act) as a non-ongoing contract provided by a

provider that is not an authorised deposit-taking institution and where the value of the contract is between \$2,001 and \$5,000.

In accordance with section 11 of the Regulations, the graduated entity metric for credit providers is the difference between the total amount of credit provided by the person in the qualifying period for the levy period under credit contracts (other than small or medium amount of credit contracts) and \$100 million.

In practice, this means that, in addition to the minimum levy component of \$100, each leviable entity in the credit providers sub-sector is required to pay a variable amount depending on the entity's share of the total value of credit contracts above the \$100 million threshold provided by the sub-sector for a levy period. The graduated levy component for credit providers is calculated on the actual amount of credit provided to consumers during the financial year (rather than on approvals).

### ***Licensed personal advice sub-sector***

The entity metric for the licensed personal advice sub-sector is the number of relevant providers that are registered on the Register of Relevant Providers (also known as the Financial Advisers Register) at the end of the qualifying period for the levy period and are authorised to provide personal advice to retail clients in relation to relevant financial products on behalf of the Australian financial services licensee.

In practice, this means that, in addition to the minimum levy component of \$100, Australian financial services licensees are required to pay a variable amount depending on the licensee's share of the total number of relevant providers (also known as financial advisers or financial planners) in the sub-sector.

However, the licensed personal advice sub-sector does not include relevant providers who only provide advice on:

- financial products that are admitted to quotation;
- financial products that are traded on a prescribed foreign financial market (as prescribed by regulation 7.7A.12D(2) of the Corporations Regulations); or
- basic banking products.

If the entity does not hold an Australian financial services licence on every day of the qualifying period for the levy period, the entity metric that applies to the licensed personal advice sub-sector is subject to a pro-rata adjustment. This adjusts the levy amount persons in this sub-sector are required to pay based on the proportion of days in the qualifying period on which the person held an Australian financial services licence.

### ***Securities dealers sub-sector***

The entity metric for the securities dealers sub-sector is the total value of transactions in securities (measured by the buy price plus the sale price of securities) that are:

- executed for the person on, or reported for the person to, a large securities exchange in the qualifying period for the levy period;

- reported by the operator of a large securities exchange to ASIC's Market Surveillance System; and
- recognised by ASIC's Market Surveillance System as executed transactions.

Two or more reports relating to the same transaction, and which contain the same information, are to be counted as one transaction.

In practice, this means that, in addition to the minimum levy component of \$100, each leviable entity within the securities dealers sub-sector is required to pay a variable amount depending on the entity's share of the total value of executed transactions in securities in the sub-sector.

#### Section 10 – Levy component for persons who are deregistered or who cease to be a member of a prescribed sub-sector

In determining the amount of annual levy that a person is required to pay, section 10 of the Regulations provides that this amount is nil, if:

- the person is required to comply with ASIC's request for information under section 8 of the *Financial Services Compensation Scheme of Last Resort Levy (Collection) Act 2023*;
- before the end of the day on which the requested information was required to be provided, the person was de-registered under Part 5A.1 of the Corporations Act, or ASIC publishes a notice regarding the proposed de-registration of the person under paragraph 601AA(4)(d) or 601AB(3)(b) of the Corporations Act; and
- the person's registration has not been re-instated before the end of that day.

Similarly, the amount of annual levy that a person is required to pay is nil if the person ceases to be a member of one of the prescribed sub-sectors (and does not resume being a member of that sub-sector) before the end of the day on which the information requested by ASIC under section 8 of the *Financial Services Compensation Scheme of Last Resort Levy (Collection) Act 2023* was required to be provided.

The purpose of section 10 of the Regulations is to ensure that entities that cease to exist, or cease to be members of a prescribed sub-sector, are not required to pay the annual levy for the levy period.

#### Section 13 – Amount of further levy where total levy does not exceed sub-sector levy cap

Subsection 13(1) of the Act provides that, if a revised claims, fees and costs estimate for a levy period and a sub-sector comes into force that requires the imposition of a further levy for the levy period and the sub-sector, the regulations may prescribe the method for working out the amount of the further levy.

The CSLR operator may determine a revised claims, fees and costs estimate for a levy period and a sub-sector if the amount of annual levy collected for the levy period and a sub-sector is insufficient, or is likely to be insufficient, to meet the costs expected to be incurred by the CSLR operator for the levy period.

If a revised claims, fees and costs estimate would not exceed the sub-sector levy cap for the levy period and the sub-sector, the CSLR operator may specify that a further levy needs to be imposed for the levy period and the sub-sector.

Section 13 of the Regulations prescribes the method for working out the amount of the further levy. The method is adapted from the method for working out the annual levy amount and is the difference between:

- the graduated levy component (calculated in accordance with the method in paragraph 9(1)(b) and subsection 11(1) of the Regulations) where the ‘sub-sector costs’ is the lesser of:
  - the amount specified in the CSLR operator’s revised claims, fees and costs estimate for the levy period and the sub-sector; and
  - the sub-sector levy cap for the levy period and the sub-sector, which is prescribed by subsection 17(2) of the Act; and
- the total amount of levy that has already been imposed for the levy period and the sub-sector.

This method ensures consistency with the objectives for working out the amount of a further levy in subsection 13(2) of the Act, by providing that the amount of the further levy does not exceed the:

- difference between the CSLR operator’s revised estimate for the levy period and the sub-sector and the total amount of levy that has already been imposed across all members of the sub-sector for the levy period;
- sub-sector levy cap for the levy period and the sub-sector, as specified in subsection 17(2) of the Act; or
- scheme levy cap of \$250 million, as specified in subsection 17(1) of the Act.

#### Section 14 – Amount of special levy (one sub-sector) where total levy exceeds sub-sector levy cap

Sections 1069F and 1069H of the Corporations Act (which are inserted by the *Treasury Laws Amendment (Financial Services Compensation Scheme of Last Resort) Act 2023*) provide that:

- if the CSLR operator makes a revised claims, fees and costs estimate for a levy period and sub-sector which could cause the sub-sector levy cap to be exceeded, the CSLR operator must notify the Minister of this in writing, as soon as practicable (subsection 1069F(3) of the Corporations Act); and

- if the Minister is given such a notice, the Minister may make a determination imposing a special levy on one or more sub-sectors for the levy period (subsections 1069H(4) and (5) of the Corporations Act).

A special levy may not be imposed for the first levy period. However, a special levy may be imposed for the second levy period or a later levy period if all of the following apply:

- the CSLR operator has made a revised claims, fees and costs estimate for the levy period;
- the CSLR operator's revised claims, fees and costs estimate could cause the sub-sector levy cap for the levy period to be exceeded; and
- the Minister has made a determination that a special levy needs to be imposed under subsections 1069H(4) or (5) of the Corporations Act.

Section 14 of the Act provides that, if a revised claims, fees and costs estimate for a levy period and a sub-sector could cause the sub-sector levy cap to be exceeded and the Minister has made a determination (under subsection 1069H(4) of the Corporations Act) imposing a special levy for the levy period and the primary sub-sector, the regulations may prescribe the method for working out the amount of the special levy.

Subsection 17(2) of the Act provides that the sub-sector levy cap is the total amount of levy that may be imposed for a levy period across all members of a particular sub-sector and is either \$20 million or an amount prescribed in regulations. The Regulations do not impose an alternative sub-sector levy cap.

Section 14 of the Regulations prescribes a method for working out the amount of the special levy where the Minister has determined that a special levy is to be imposed on the sub-sector to which the revised claims, fees and costs estimate relates (the primary sub-sector).

Section 14 of the Regulations provides that the amount of the special levy is the graduated levy component that would have been worked out using the method for calculating the annual levy amount in section 9 of the Regulations, where the 'sub-sector costs' is the lesser of:

- the amount specified in the Minister determination made under paragraph 1069H(4)(b) of the Corporations Act; and
- the scheme levy cap minus the total amount of levy that has already been imposed across all members across all sub-sectors for the levy period before the Minister's determination was made.

This method for working out the special levy ensures:

- consistency in the way each of the CSLR levies are worked out;

- equitable distribution of the special levy across all members of the sub-sector; and
- consistency with the objectives for working out the amount of the special levy, specified in subsection 14(2) of the Act, by providing that the special levy does not exceed the amount determined by the Minister, or cause the scheme levy cap for the levy period to be exceeded.

#### Sections 15, 16 and 17 – Amount of special levy (several sub-sectors) where total levy exceeds sub-sector levy cap

Section 15 of the Act provides that, if a revised claims, fees and costs estimate for a levy period and a sub-sector could cause the sub-sector levy cap to be exceeded and the Minister has made a determination (under subsection 1069H(5) of the Corporations Act) imposing a special levy for the levy period across several sub-sectors, the regulations may prescribe the method for working out the amount of the special levy.

Section 15 of the Regulations prescribes a method for working out the amount of the special levy where the Minister has determined that a special levy is to be imposed on several sub-sectors (not just the primary sub-sector to which the revised claims, fees and costs estimate relates). This section provides that the amount of levy imposed by the special levy is the amount worked out under section 16 or section 17 of the Regulations.

Sections 16 and 17 of the Regulations prescribe two different methods for working out the amount of special levy that is payable by entities depending on how the sub-sectors are classified under the ASIC Levy Regulations.

#### ***Sub-sectors to which a basic levy component applies***

Section 16 of the Regulations applies where the sub-sector on which the special levy is imposed is of a kind to which the basic levy component applies under the ASIC Levy Regulations. For these sub-sectors, the total special levy is apportioned equally between the leviable entities in each of the prescribed sub-sectors for the levy period.

The total special levy means the total amount of special levy that is specified in the Minister's determination, which is made under paragraph 1069H(5)(b) of the Corporations Act.

However, if the amount specified in the Minister's determination would cause the scheme levy cap for the levy period to be exceeded, the total special levy is the amount remaining in the scheme levy cap. The amount remaining in the scheme levy cap is the difference between the scheme levy cap (\$250 million) and the amount of levy that has already been imposed across all members across all sub-sectors for the levy period before the Minister's determination was made. The amount remaining in the scheme levy cap would then be apportioned across all of the members of the specified sub-sectors in accordance with the Minister's determination.

This method ensures consistency with the objectives for working out the amount of the special levy, specified in subsections 15(2) and (3) of the Act, by providing that the amount of the special levy does not:

- exceed the amount specified in the Minister’s determination made under paragraph 1069H(5)(b) of the Corporations Act; or
- cause the scheme levy cap (of \$250 million) for the levy period to be exceeded.

### ***Sub-sectors to which a graduated levy component applies***

Section 17 of the Regulations applies to the sub-sectors to which section 16 of the Regulations does not apply (that is, sub-sectors to which the graduated levy component applies under the ASIC Levy Regulations).

If the special levy is imposed on sub-sectors to which a graduated levy component applies, the total special levy is not apportioned equally, but in accordance with the leviable entity’s relative size within their sub-sector.

In accordance with section 16 of the Regulations, the total special levy is the amount specified in the Minister’s determination made under paragraph 1069H(5)(b) of the Corporations Act, or (if the Minister’s determination would cause the scheme levy cap for the levy period to be exceeded) the amount remaining in the scheme levy cap.

The methods for working out the amount of special levy payable under sections 16 and 17 of the Regulations is the same as the methods prescribed under the ASIC Levy Regulations. The only exception to this is that the ‘sub-sector population’ for the purposes of determining the graduated levy component of the special levy (under section 17 of the Regulations) only applies to entities that are members of the AFCA scheme. This is consistent with the method for working out the graduated levy component of the annual levy under section 9 of the Regulations.

Also, as for the annual levy, if a component of the formula for working out the graduated levy component under section 17 of the Regulations is nil or a negative amount, the amount of special levy worked out using the formula is nil.

### **Section 18 – Amount of one-off levy**

Subsection 16(1) of the Act provides for regulations to prescribe the method for working out the amount of the one-off levy imposed on a person for the first levy period.

The one-off levy funds the backlog of accumulated unpaid complaints, AFCA’s unpaid fees and AFCA’s accumulated unpaid fees for pre-CSLR complaints (that is, complaints given to AFCA between 1 November 2018 and 7 September 2022).

Section 10 of the Act provides that the one-off levy is imposed on a person if the person’s total income for the 2021-22 income year is one of the 10 highest of all of the persons who satisfy both of the following criteria:

- at any time during the 12 months before the start of the first levy period, the person is a body regulated by APRA; and
  - This does not include private health insurers within the meaning of *Private Health Insurance (Prudential Supervision) Act 2015* or the trustee of a superannuation entity, within the meaning of the *Superannuation Industry (Supervision) Act 1993*.
- section 3C of the *Taxation Administration Act 1953* applies to the person for the 2021-22 income year (which requires corporate tax entities with a total income of \$100 million or more to report particular information to the Commissioner).

Section 18 of the Regulations prescribes the following method for working out the one-off levy amount:

$$\text{Estimate} \times \frac{\text{Person's total income for the 2021-2022 income year}}{\text{Total income of all leviable persons for the 2021-2022 income year}}$$

‘Estimate’ is defined in section 18 of the Regulations as the lesser of:

- the amount specified in the CSLR operator’s initial estimate of the one-off levy (that is, the initial estimate of unpaid claims and AFCA’s unpaid fees for complaints given to AFCA before the accumulation recovery day); and
- the scheme levy cap (of \$250 million).

This method ensures consistency with the objectives for working out the amount of the one-off levy, specified in subsection 16(2) of the Act, by providing that the amount of the one-off levy does not exceed the CSLR operator’s initial estimate of the one-off levy, or cause the scheme levy cap in subsection 17(1) of the Act to be exceeded.

This formula apportions the one-off levy amount to each of the 10 entities to which the one-off levy applies depending on the entity’s total income for the 2021-22 income year as a proportion of the combined total income of the 10 entities. This means that the one-off levy is apportioned based on the relative income generated by each of the 10 entities that are required to pay the one-off levy.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **Financial Services Compensation Scheme of Last Resort Levy Regulations 2023**

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Overview of the Legislative Instrument**

The purpose of the Regulations is to support the amendments made by the *Financial Services Compensation Scheme of Last Resort Levy Act 2023* (the Act), which created the levy framework to fund the compensation scheme of last resort (CSLR).

The Act imposes levies on parts of the financial services industry to fund the CSLR. The CSLR levy framework comprises the following funding mechanisms:

- primary funding mechanism - an annual levy for a levy period and a sub-sector;
- secondary funding mechanisms:
  - where a revised claims, fees and costs estimate for a levy period and a sub-sector would not cause the sub-sector levy cap to be exceeded - one or more further levies;
  - where a revised claims, fees and costs estimate for a levy period and a sub-sector could cause the sub-sector levy cap to be exceeded - one or more special levies, as determined by the Minister; and
- a one-off levy payable in the first levy period only, which funds the backlog of accumulated unpaid complaints (and associated unpaid and accumulated Australian Financial Complaints Authority (AFCA) fees) for complaints given to AFCA between 1 November 2018 and 7 September 2022 that fall within the scope of the CSLR.

The Regulations support the Act by prescribing:

- the sub-sectors that are required to pay the annual levy for the second levy period and each subsequent levy period;
- the general conditions for the imposition of the annual levy and the special levy; and
- the methods for working out the amount of the annual levy, further levy, special levy and one-off levy.

**Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.